

**FCC REPORT TO CONGRESS
AS REQUIRED BY THE ORBIT ACT**

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FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT**SEVENTH REPORT**

This report is submitted in accordance with Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT Act”).¹

Section 646 states:

(a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.

(b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:

(1) Progress with respect to each objective since the most recent preceding report.

(2) Views of the Parties with respect to privatization.

(3) Views of the industry and consumers on privatization.

(4) Impact privatization has had on United States industry, United States jobs, and United States industry’s access to the global marketplace.

I. Progress as to Objectives and Purposes

The purpose of the ORBIT Act is “to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”²

The ORBIT Act, as originally passed in 2000: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off, New Skies Satellites N.V. (“New Skies”), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) directs the Commission to “limit through conditions or deny” applications or requests to provide “non-core” services to, from, or within the United States if it finds that competition will be harmed.³ It provides for certain exceptions to limitations on non-core services in the

¹ 47 U.S.C. § 765e (2000).

² 47 U.S.C. § 761 NOTE.

³ The Act defines “non-core” services as “services other than public-switched network voice telephony and occasional-use television” with respect to INTELSAT, and as “services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers” with respect to Inmarsat. 47 U.S.C. § 769(a)(11).

event of such a determination. The Act also prohibits the Commission from authorizing certain “additional” services pending privatization consistent with the criteria in the Act.⁴ In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure U.S. users the opportunity for direct access to the INTELSAT system. In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the initial public offering (“IPO”) requirements under Sections 621(5)(A) and (B). Additionally, in July 2005, Congress further amended the ORBIT Act, striking certain privatization criteria for Intelsat separated entities, removing certain restrictions on separated entities and successor to Intelsat and for other purposes.⁵

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.⁶ The Commission made its second report on June 15, 2001,⁷ its third report on June 14, 2002,⁸ its fourth report on June 11, 2003,⁹ its fifth report on June 15, 2004,¹⁰ and its sixth report on June 15, 2005.¹¹ In anticipation of this seventh report, the Commission issued a Public Notice on March 9, 2006 inviting public comment.¹² Comments were filed by Inmarsat PLC (formerly Inmarsat Group Holdings, Limited) (“Inmarsat”), Intelsat LLC (“Intelsat”), Mobile Satellite Ventures Subsidiary, LLC (“MSV”) and the International Telecommunications Satellite Organization (“ITSO”).¹³ Reply comments were filed by Intelsat and Inmarsat.¹⁴

⁴ The Act defines “additional” services as “direct-to-home” (“DTH”) or direct broadcast satellite (“DBS”) video services, or services in the Ka or V bands” for INTELSAT and as “those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band” for Inmarsat. 47 U.S.C. § 769(a)(12).

⁵ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (October 25, 2004), *as amended*, Pub. L. No. 109-34, 119 Stat. 377 (July 12, 2005). In the July 2005 amendment to the ORBIT Act, Congress added a requirement that the Commission submit to Congress a separate annual report (“Satellite Competition Report”) that analyzes the competitive market conditions with respect to domestic and international satellite communications services. In anticipation of this Report, the Commission issued a Public Notice on March 20, 2006 inviting public comment. Public Notice, DA 06-635, IB Docket No. 06-67 (rel. March 20, 2006). Comments were due by April 19, 2006 and Reply Comments were due by May 4, 2006. Comments that were filed are currently being reviewed and will be addressed in the Satellite Competition Report.

⁶ *FCC Report to Congress as Required by the ORBIT Act*, 15 FCC Rcd 11288 (2000).

⁷ *FCC Report to Congress as Required by the ORBIT Act*, 16 FCC Rcd 12810 (2001).

⁸ *FCC Report to Congress as Required by the ORBIT Act*, 17 FCC Rcd 11458 (2002).

⁹ *FCC Report to Congress as Required by the ORBIT Act*, 18 FCC Rcd 12525 (2003).

¹⁰ *FCC Report to Congress as Required by the ORBIT Act*, 19 FCC Rcd 10891 (2004).

¹¹ *FCC Report to Congress as Required by the ORBIT Act*, FCC 15-127 (2005).

¹² Public Notice, Report No. SPB-215, March 9, 2006.

¹³ See Comments of Inmarsat PLC, filed on March 30, 2006 (“Inmarsat Comments”); Comments of Intelsat LLC, filed on March 30, 2006 (“Intelsat Comments”); Comments of Mobile Satellite Ventures Subsidiary, LLC, filed on (Continued)

A. Commission Actions and Activities

The Commission has undertaken a number of actions required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive manner, consistent with the privatization criteria of the Act.¹⁵ The Commission has also taken these actions to implement certain deregulatory measures in the Act.¹⁶

INTELSAT

- In August 2000, the Commission granted conditional licensing authority to Intelsat LLC, (“Intelsat”), a separate, privately held U.S. corporation created by INTELSAT to hold U.S. satellite authorizations and associated space segment assets.¹⁷ Under this licensing authority, the Commission permitted Intelsat LLC’s licenses to become effective upon “privatization,” meaning the transfer of INTELSAT’s satellites and associated assets to Intelsat and the transfer of its International Telecommunications Union (“ITU”) network filings to the U.S. registry. Intelsat LLC was granted conditional U.S. authorizations for INTELSAT’s existing satellites, planned satellites, and planned system modifications associated with INTELSAT’s frequency assignments in the fixed satellite services (“FSS”) C- and Ku- bands existing as of privatization.¹⁸
- Later in 2000, INTELSAT adopted plans to distribute shares in Intelsat LLC to its Signatories on July 18, 2001.¹⁹ In May 2001, the Commission found that, although the IPO required

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March 30, 2006 (“MSV Comments”); and Comments of the International Telecommunications Satellite Organization, filed on March 30, 2006 (“ITSO Comments”).

¹⁴ See Reply Comments of Inmarsat PLC, filed on April 13, 2006 (“Inmarsat Reply”) and Reply Comments of Intelsat LLC, filed on April 13, 2006 (“Intelsat Reply”).

¹⁵ 47 U.S.C. §§ 761, 763, 763a, 763b, 763c, and 765g.

¹⁶ 47 U.S.C. §§ 765 and 765d(1).

¹⁷ See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460, *recon. denied*, 15 FCC Rcd 25234 (2000), *further proceedings*, 16 FCC Rcd 12280 (2001) (“*Intelsat Licensing Order*”).

¹⁸ See *Intelsat Licensing Order*, 15 FCC Rcd 15460. The conventional C-band refers to the 3700-4200/5925-6425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3625-3700/5850-5925/6425-6650 MHz on certain satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3420-3625 MHz on the Intelsat-805 satellite at 55.5° W.L. for service to non-US locations. The 3420-3600 MHz portion of this frequency band is not a satellite band in the U.S. and is operated by Intelsat outside the U.S. subject to potential interference from worldwide shipborne U.S. military radar operations. The conventional Ku-band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

¹⁹ Upon privatization, former INTELSAT Signatories and non-Signatory investing entities were issued shares in Intelsat Ltd. according to their March 2001 investment shares in INTELSAT.

under the privatization requirements of the ORBIT Act had not yet been completed, INTELSAT would privatize in a manner consistent with the non-IPO privatization provisions of the ORBIT Act, upon completion of its plans to distribute Intelsat LLC shares to its Signatories.²⁰ INTELSAT later distributed shares to its Signatories as it had planned.

- Since the Sixth Annual Report, Intelsat has filed a number of requests for license modifications. The Commission has reviewed these requests and acted on them consistent with the United States licensing process.²¹
- On July 28, 2003, Loral Satellite Inc. (“Debtor-in-Possession” or “DIP”), and Loral SpaceCom Corporation (DIP), and Intelsat North America, LLC filed an application seeking authority to assign five non-common carrier space station licenses to Intelsat North America. On February 11, 2004, the Commission granted, subject to conditions, authority to assign those licenses subject to certain limitations.²² Loral was providing services, such as DTH, that are “additional services” as defined by the ORBIT Act. Intelsat was granted a 180-day Special Temporary Authority (“STA”) to provide additional services to the then existing Loral customers.²³

²⁰ See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 12313, 12290. (para 71) (2001) (*Intelsat LLC ORBIT Act Compliance Order*”).

²¹ See e.g., Intelsat North America LLC, Request of Extension of Launch Milestone Date for the IA-8 Satellite and Request for Waiver of Section 25.210(i) of the Commission’s Rules. File Nos., SAT- SAT-MOD-20050203-00019, SAT-MOD-200500422-00089, (stamp grant from Andrea Kelly, Chief, Policy Branch to Sue Crandall, Counsel for Intelsat North America LLC, provided on June 16, 2005, with conditions); Intelsat North America LLC, Application to Modify the INTELSAT 602 Authorization to Relocate INTELSAT 602 from 50.5° EL. to 150.5° E.L., File No. SAT-MOD-20050512-00098, *Order*, DA 05-1904, (June 29, 2005); Intelsat North America LLC, Fleet Management Notice of Modification of Authorization for INTELSAT 604, File No., SAT-MOD-20050817-00161, DA 05-2670 (granted pursuant to streamlined fleet management procedures under Section 25.118(e) of the Commission’s rules to move the INTELSAT 604 satellite from 157.0° EL. to 178° E.L.; grant effective September 16, 2005). Additionally, as mentioned in last year’s report, in February 2005, Intelsat North America LLC filed applications to operate in the 17/24 GHz BSS band. See Intelsat North America LLC, Application for Authority to Construct, Launch and Operate a Direct Broadcast Satellite system comprised of four satellites in the 17 GHz and 25 GHz Bands, IBFS File Nos. SAT-LOA-20050210-00028 (Call Sign S2659), SAT-LOA-20050210-00029 (Call Sign S2660), SAT-LOA-20050210-00030 (Call Sign S2661) and SAT-LOA-20050210-00031 (Call Sign S2662). These applications remain pending.

²² Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Authorization and Order*, 19 FCC Rcd 2404 (Int’l Bur., 2004) (“*Loral/Intelsat Order*”). On March 4, 2004, the Commission adopted a Supplemental Order clarifying the date at which the Special Temporary Authority was to commence. Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Supplemental Order*, 19 FCC Rcd 4029 (Int’l Bur., 2004).

²³ *Loral/Intelsat Order*, 19 FCC Rcd at 2429 (para 65). SES filed an Application for Review of this decision on March 12, 2004. SES also filed a Motion for Expedited Consideration in part of the Application for Review, asking (Continued)

- On July 30, 2004, the Commission granted Intelsat's STA Extension Request for an additional 180 days, from September 14, 2004 to March 14, 2005.²⁴ On March 14, 2005²⁵ and on April 13, 2005,²⁶ Intelsat was granted 30-day extensions of the STA to maintain the *status quo*, pending the Commission's ruling on the matters relating to Intelsat's legal status under the ORBIT Act to provide "additional services." No further STAs are required as a result of the Commission's action on April 8, 2005, discussed below.
- Intelsat was originally required by the ORBIT Act to conduct an IPO by October 1, 2001 to "substantially dilute" ownership by former INTELSAT Signatories. The ORBIT Act also gave the Commission discretion to extend this deadline to no later than December 31, 2002. Congress amended the ORBIT Act to extend Intelsat's IPO deadline to June 30, 2005, and to provide the Commission with the discretionary authority to further extend the deadline to no later than December 31, 2005.²⁷
- On March 15, 2004, Intelsat LLC filed with the U.S. Securities and Exchange Commission ("SEC") a registration statement on Form F-1 in connection with its IPO. On April 22, 2004, Intelsat LLC filed an amendment to the registration statement. On May 21, 2004, Intelsat issued a press release announcing that it had withdrawn its planned IPO and that it intended to explore strategic alternatives.²⁸ On May 21, 2004, Intelsat filed a second amendment to its registration statement withdrawing the registration statement and confirming that no ordinary shares of Intelsat had been sold in connection with the proposed offering.²⁹
- In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).³⁰
- On December 22, 2004, the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus Holdings Limited ("Zeus"), a private equity group, organized under the law of Bermuda, which would acquire 100 percent of the equity and

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the Commission to vacate the STA as unlawful. On March 29, 2004, Intelsat filed an Opposition to SES Application for Review.

²⁴ Intelsat North American, LLC Request for Extension of Special Temporary Authority, File No. SAT-STA-20040615-00116, *Order*, 19 FCC Rcd 14807 (Int'l Bur., 2004).

²⁵ Intelsat North American, LLC Request for Extension of Special Temporary Authority, *Order*, File No. SAT-STA-20050228-00052, (Int'l Bur., rel. March 14, 2005).

²⁶ Intelsat North American, LLC Request for Extension of Special Temporary Authority, *Order*, DA 05-1061, File No. SAT-STA-20050228-00052, (Int'l Bur., rel. April 13, 2005).

²⁷ Public Law No. 108-228, 118 Stat. 644 (May 18, 2004).

²⁸ Intelsat Press Release "*Intelsat Announces Decision to Withdraw Planned Initial Public Offering of Shares and Intention to Explore Strategic Alternatives*," Press Release: 2004-17, May 21, 2004.

²⁹ *Intelsat, Ltd., Amendment No. 2 to Form F-1 Registration Statement under the Securities Act of 1933*, May 21, 2004, ("*Intelsat, Amendment 2 to F-1 Registration Statement*").

³⁰ Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

voting interests of Intelsat (“Zeus/Intelsat Transaction”).³¹ Zeus is wholly owned by 20 entities, which are ultimately controlled by four private equity fund groups. The fund groups are advised by Apax Partners, Apollo, Madison Dearborn and Permira, with each fund group holding 25 percent of the shares of Zeus.

- On December 23, 2004, Intelsat filed a Petition for Declaratory Ruling and Certification pursuant to Section 621(5)(F) of the ORBIT Act. After receiving a Supplemental Submission, the Commission placed Intelsat’s Petition for Declaratory Ruling and Certification on public notice. On January 28, 2005, Intelsat informed the Commission that the Zeus/Intelsat Transaction, as provided for in the Zeus/Intelsat Order and Authorization, had been consummated. On February 3, 2005, Intelsat filed applications for a *pro forma* transfer of control seeking to insert a new Bermuda holding company in the vertical ownership chain of Intelsat’s U.S. licensees. On February 9, 2005, Intelsat filed an updated Certification to reflect the consummation of the Zeus/Intelsat Transaction. On April 8, 2005, the Commission determined that Intelsat’s certification was in compliance with Sections 621(5)(F) and 621(5)(G) of the ORBIT Act, that Intelsat can forgo the requirement for an IPO and the public listing of securities, and that Intelsat was no longer subject to the provisions of Section 602 that prohibited Intelsat from providing “additional services.”³²
- On May 24, 2005, the Commission granted Intelsat LLC’s request for approval of the *pro forma* assignments of space station authorizations and related Tracking, Telemetry and Control (“TT&C”) earth station licenses, from Intelsat LLC to Intelsat North America LLC.³³
- On September 30, 2005, Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC (the transferors), Intelsat Holdings, Ltd. (the

³¹ See *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366, Order and Authorization, DA No. 04-4034, 19 FCC Rcd 24820 (Int’l Bur., WTB and OET 2004) (“*Intelsat-Zeus Order*”). In early 2005, the Commission granted authority to interpose Intelsat Subsidiary Holding Company Ltd. into the chain of ownership and modified its foreign ownership ruling to include new Bermuda-based intermediate parent Intelsat Subsidiary Holding Company Ltd. See *Intelsat, Ltd.*, File No. ISP-PDR-20050203-00004, Grant of Authority, Public Notice, Report No. TEL-00884, DA No. 05-479, 20 FCC Rcd 4052, 4053 (Int’l Bur. 2005); *Intelsat North America LLC*, File No. SAT-T/C-20050203-00022, and *Intelsat LLC*, File No. SAT-T/C-20050203-00023, Grant of Authority, Public Notice, Report No. SAT-00276, DA No. 05-594 (Int’l Bur. Mar. 4, 2005), at 1-2; *Intelsat LLC*, File Nos. SES-T/C-20050203-00138, -00139 and -00140, and *Intelsat MTC LLC*, File No. SES-T/C-20050203-00141, Grant of Authority, Report No. SES-00691 (Int’l Bur. Mar. 2, 2005), at 26-27; *Intelsat USA License Corp.*, File No. ITC-T/C-20050418-00279, *Intelsat General Corporation*, File No. ITC-T/C-20050418-00280, and *Intelsat MTC LLC*, File No. ITC-T/C-20050418-0281, Grant of Authority, Public Notice, Report No. TEL-00931, DA No. 05-2192 (Int’l Bur. 2005), at 3-4. During 2005, Zeus Holdings Limited changed its name to Intelsat Holdings, Ltd. See, e.g., *Intelsat USA License Corp.*, Report No. TEL-00931, at 3.

³² Intelsat, Ltd. Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, FCC 05-86, adopted April 8, 2005, released April 15, 2005, IB Docket 05-18 (“*Intelsat Certification Order*”).

³³ See Intelsat LLC, Assignor, and Intelsat North America LLC, Assignee, Applications for Consent to Pro Forma Assignment of Space Station Authorizations and Related TT&C Earth Station Licenses, File Nos., SAT-ASG-20050418-00084, SAT-ASG-20050418-00085, SES-ASG-20050502-00519, SES-ASG-20050502-00520, SES-ASG-20050502-00562. DA-05-1545, Public Notice, Report No. SAT-00294, March 27, 2005.

transferee) and PanAmSat Holding Corporation filed applications with Commission seeking approval for the transfer of control of FCC licenses held by PanAmSat Licensee Corp and PanAmSat H-2 Licensee Corp to Intelsat.³⁴ These applications were placed on Public Notice on October 14, 2005.³⁵ This proposed transfer of control is pending.

Inmarsat

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The ORBIT Act specified a number of criteria for determining whether Inmarsat's privatization is pro-competitive. On October 9, 2001, the Commission released an Order in which it concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.³⁶
- In this decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act,³⁷ the Commission granted Comsat Corporation; Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere & Company regular earth station authority to use certain Inmarsat satellites for communications services to, from, or within the United States.
- The Commission also granted several other earth station applications to communicate with Inmarsat's satellites as a point of communication.³⁸

³⁴ See Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, PEOP PAS, LLC, Transferors, Intelsat Holdings, LTD, Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp, File Nos: SAT-T/C-20050930-00193. ("Intelsat Transfer of Control Application"). (Constellation, LLC ("Constellation"), Carlyle PanAmSat I, LLC ("Carlyle PanAmSat I"), Carlyle PanAmSat II, LLC ("Carlyle PanAmSat II"), PEP PAS, LLC ("PEP PAS"), and PEOP PAS, LLC ("PEOP PAS" and, collectively with Constellation, Carlyle PanAmSat I, Carlyle PanAmSat II, and PEP PAS, the "Transferors"), Intelsat Holdings, Ltd. ("Intelsat" or the "Transferee"), and PanAmSat Holding Corporation ("PanAmSat" and, together with the Transferors and the Transferee, the "Applicants") have filed a series of applications ("Applications") pursuant to section 310(d) of the Communications Act of 1934, as amended, seeking Commission approval to transfer control of Commission licenses held by two subsidiaries of PanAmSat to Intelsat. PanAmSat is the indirect parent of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp. (collectively, the "PanAmSat Licensees"), which hold authorizations to operate non-common carrier fixed-satellite service satellites using the C- and Ku-bands, as well as authorizations for numerous non-common carrier earth stations that transmit and/or receive signals in those frequency bands.

³⁵ See Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, PEOP PAS, LLC, Transferors, Intelsat Holdings, LTD, Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., *Public Notice*, IB Docket No. 05-290, DA 05-2715, (October 14, 2005).

³⁶ Comsat Corporation et. al., *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("Inmarsat ORBIT Act Compliance Order").

³⁷ See 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

³⁸ See e.g., Exxon Communications Company, SES-LIC-20040413-00548, granted August 31, 2004 to access the INMARSAT Ltd. 1 satellite at 15.5° W.L., the INMARSAT Ltd. 3 satellite at 178° E.L., and the INMARSAT Ltd. 3 satellite at 54° W.L. and Telenor Satellite, SES-MOD-20041029, granted March 4, 2005 to access INMARSAT Ltd. (Continued)

- The ORBIT Act originally required Inmarsat to conduct an IPO no later than October 1, 2000. The Act also permitted the Commission to extend this deadline to no later than December 31, 2001.³⁹ Since that time, Congress has amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO. On June 30, 2003, Congress extended Inmarsat's IPO deadline to June 30, 2004, and gave the Commission discretion to further extend this deadline to no later than December 31, 2004.⁴⁰ On June 25, 2004, the Commission granted Inmarsat's request for an extension of the deadline for conducting an IPO from June 30, 2004 to December 31, 2004,⁴¹ and on October 25, 2004, Congress extended the IPO deadline to June 30, 2005.⁴²
- On February 10, 2004, Inmarsat filed a letter informing the Commission of a series of transactions, which it describes as constituting an IPO pursuant to Inmarsat's remaining ORBIT Act requirements. The two transactions were: (1) an equity transaction, by which a 52.28 percent equity interest was sold to funds advised by Apax Partners and Permira, and Inmarsat management acquired a 4.75 percent ownership interest; and (2) a public offering of debt in which Inmarsat issued \$375 million of 7 5/8 percent "Series A" notes due in 2012.⁴³ The Commission issued a Public Notice seeking comment on Inmarsat's compliance with the Orbit Act IPO requirement. MSV and SES filed comments requesting that the Commission reject Inmarsat's claims, and Telenor Satellite, Inc ("Telenor"), Stratos and Deere & Company submitted comments in support of Inmarsat's claims.
- In October 2004, Congress amended the ORBIT Act, extending the IPO deadline for Inmarsat to June 30, 2005 and adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).⁴⁴
- On November 15, 2004, Inmarsat certified to the Commission that it had fulfilled the amended privatization requirements of Section 621(5) of the ORBIT Act, and it petitioned the Commission to determine that its certification complied with the remaining privatization criterion of the ORBIT Act. On December 16, 2004, Inmarsat supplemented its request with additional information on the ownership interests of the intergovernmental organization, International Mobile Satellite Organization.

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3 satellite at 15.5° W.L., INMARSAT Ltd. 3 satellite at 54° W.L., INMARSAT-2 AOR-EAST satellite at 17° W.L., and INMARSAT-2 AOR-WEST satellite at 98° W.L.

³⁹ 47 U.S.C. §763 (5)(A)(ii).

⁴⁰ ORBIT Technical Corrections Act of 2003, Pub. L. No. 108-39, § 763, 117 Stat. 835 (2003).

⁴¹ See Inmarsat Ventures Limited Request for Extension of Time under Section 621(5) of the Communications Satellite Act of 1962, as amended by the Open-Market Reorganization for the Betterment of International Telecommunications Act, *Order*, 19 FCC Rcd 11387 (2004).

⁴² Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

⁴³ Letter from Alan Auckenthaler, Inmarsat, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Feb. 10, 2004) (File No. SAT-MS-C-2004021-00027).

⁴⁴ Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

- On June 14, 2005, the Commission determined that Inmarsat's certification was in compliance with Sections 621(5)(F) and 621(5)(G), that Inmarsat can forgo the requirement for an IPO and the public listing of securities, and that Inmarsat was no longer subject to the provisions of Section 602 that prohibited Inmarsat from providing additional services.⁴⁵
- In 2005 and 2006, a number of Inmarsat resellers, including BT Americas, Inc. ("BT Americas"), FTMSC US, LLC ("FTMSC"), MVS USA, Inc. ("MVS USA"), Satamatics, Inc. ("Satamatics"), SkyWave Mobile Communications Corp. ("SkyWave"), Stratos Communications, Inc. ("Stratos"), Telenor Satellite, Inc. ("Telenor"), and Thrane and Thrane Airtime, LTD ("Thrane and Thrane") filed applications⁴⁶ to continue or, in some cases to commence, operations of mobile earth terminals ("METs") and gateway land earth stations ("LESs") in the United States, using the recently launched Inmarsat 4F2 satellite. These applications are pending. We note, however, that on January 18-19, 2006, the Commission granted with conditions requests for special temporary authority to continue MET operations, previously conducted using the Inmarsat 3F4 satellite, on the Inmarsat 4F2 satellite.⁴⁷ Also on May 12, 2006, the Commission granted with conditions the requests for special temporary authority filed by BT America, FTMSC, MVS USA, Stratos, and Telenor

⁴⁵ Inmarsat Group Holdings Limited Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, IB Docket 04-439, FCC 05-126, released June 14, 2005 ("Inmarsat Certification").

⁴⁶ See IBFS File Nos. SES-LFS-20060303-00343, SES-AMD-20060316-00448 (Call Sign E060076); SES-LFS-20051011-01396, SES-AMD-20051118-01602 (Call Sign E050284); SES-LFS-20051123-01634 (Call Sign E050348); SES-MFS-20051202-01665 (Call Sign E020074); SES-MFS-20051207-01709 (Call Sign E030055); SES-LFS-20050826-01175, SES-AMD-20050922-01313, SES-AMD-20051117-01590 (Call Sign E050249); SES-MFS-20051122-01614, SES-MFS-20051122-01615, SES-MFS-20051122-01616, SES-MFS-20051122-01617, SES-MFS-20051122-01618 (Call Signs E000180, E010047, E010048, E010049, E010050); SES-LFS-20050930-01352, SES-AMD-20051111-01564, SES-AMD-20060109-00019 (Call Sign E050276); SES-MFS-20060118-00050, SES-MFS-20060118-00051, SES-MFS-20060118-00052, SES-MFS-20060118-00053 (Call Signs E000280, E000282, E000283, E000285); SES-MFS-20051123-01626, SES-MFS-20051123-01627, SES-MFS-20051123-01629, SES-MFS-20051123-01630 (Call Signs KA312, KA313, WA28, WB36); SES-LFS-20060522-00852 (Call Sign E060179).

⁴⁷ Satellite Communications Services Information, Actions Taken, *Public Notice*, Report No. SES-00788 (rel. Jan. 25, 2006) (granting IBFS File Nos. SES-STA-20051216-01756, SES-STA-20051216-01757, SES-STA-20051216-01758, SES-STA-20051216-01759, SES-STA-20051216-01760, SES-STA-20051216-01761, SES-STA-20051216-01762, SES-STA-20051216-01763, SES-STA-20051216-01764, SES-STA-20051222-01788, and SES-STA-20051223-01790).

to operate Inmarsat's broadband global area network ("BGAN")⁴⁸ METs in the United States, via the Inmarsat 4F2, for a period of 60 days.⁴⁹

New Skies Satellites

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the Satellite Division added four satellites operated by New Skies to the Commission's Permitted Space Station List⁵⁰ ("Permitted List") with conditions to remove secondary status requirements for certain New Skies' satellites.⁵¹ This action enabled New Skies to provide satellite services to, from, and within the United States on a full-term basis.⁵²
- On June 25, 2004, the Commission granted an application to transfer control of Commission licenses and authorizations held by New Skies Satellites N.V. and New Skies Networks, Inc. to New Skies Satellites B.V.⁵³
- On January 6, 2006, New Skies Satellites Holdings Ltd. and SES GLOBAL S.A. filed an application seeking approval to transfer control of Commission authorizations held by New Skies Networks, Inc. ("NSN") to SES GLOBAL.⁵⁴ Specifically, SES GLOBAL and New

⁴⁸ The BGAN service supports both Internet protocol ("IP") packet-switched data and circuit-switched applications. Inmarsat indicates that the BGAN service uses Internet protocol to offer variable data rates from 384 kbps (kilobits per second) to 492 kbps in the downstream direction and 240 kbps to 492 kbps in the upstream direction, depending on the terminal type. Circuit based services include both voice and 64 kbps integrated services digital network ("ISDN"). Thus, Inmarsat indicates that the BGAN data transmission rates will allow customers to access to e-mail, local area networks, the Internet, intranet/extranet, video conferencing services, video-on-demand, and voice communications (including Voice over IP) from almost anywhere in the world.

⁴⁹ See Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00821 (rel. May 17, 2006) (IBFS File Nos. SES-STA-20060310-00419, SES-STA-20060313-00430, SES-STA-20060314-00438, SES-STA-20060315-00445, and SES-STA-20060316-00454).

⁵⁰ The Permitted List denotes all satellites and services with which U.S. earth stations with "routinely" authorized technical parameters operating in the conventional C- and Ku-bands ("ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic International Satellite Service in the United States, *First Order on Reconsideration*, 15 FCC Rcd 7207 (1999).

⁵¹ New Skies Satellites, N.V., DA 01-513, *Order*, 16 FCC Rcd. 7482 (Int'l Bur., Sat. and Rad. Div., rel. March 29, 2001).

⁵² See New Skies Satellites, N.V., Petition for Declaratory Ruling, *Order*, 16 FCC Rcd 6740 (Sat. and Radio. Div., 2001).

⁵³ See Application of New Skies Satellites N.V. (Transferor) and New Skies Satellites B.V. (Transferee) Transfer Control of FCC Licenses and Authorizations Held by New Skies Satellites N.V. and New Skies Networks, Inc., 19 FCC Rcd 21232 (2004).

⁵⁴ File No. SES-T/C-20060106-00013, as amended by File No. SES-AMD-20060320-00471 ("Transfer of Control Application"). See also Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for SES GLOBAL, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 06-23 (filed Mar. 21, 2006) (providing revised Exhibit E to File No. SES-T/C-20060106-00013 ("March 21 Section 1.65 Letter")).

Skies Holdings sought approval for the transfer of control of licenses held by NSN for six non-common carrier earth stations for communication with non-U.S. licensed satellites that have been added to the Permitted List.⁵⁵ In addition, SES GLOBAL and NSN's parent, New Skies Satellites B.V., sought approval for the transfer of control of three non-U.S. satellites operated by New Skies that the Commission has authorized to provide service to the United States pursuant to the Commission's Permitted List. On March 29, 2006, the Commission approved the applications.⁵⁶

- Since privatization, the Commission also granted several requests from earth station operators to add New Skies satellites as a point of communication.⁵⁷

Status of Comsat

- The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin's purchase of Comsat was in the public interest and authorized Comsat to assign its FCC licenses and authorizations to a wholly-owned subsidiary of Lockheed Martin Corporation.⁵⁸
- On April 23, 2001, Comsat and Lockheed Martin jointly filed applications to assign four non-common carrier earth station licenses to Intelsat LLC and also filed an application to assign an Experimental License.⁵⁹

⁵⁵ See Permitted List, available at <http://www.fcc.gov/ib/sd/se/permitted.html>.

⁵⁶ See New Skies Satellites Holdings LTD, Transferor, and SES Global S.A., Transferee, Applications to Transfer Control of Authorizations Held By New Skies Networks, Inc. and Notification of Change to Permitted Space Station List, DA 06-699, IB Docket No. 06-23, *Public Notice* (Int'l Bur. approved the transfer of control with conditions), March 29, 2006.

⁵⁷ We note that earth stations that meet the Commission's two-degree spacing technical requirements and operate in the conventional C- or Ku frequency bands can obtain ALSAT authority which allows the earth station to communicate with any satellite on the Commission's Permitted List. Currently, New Skies Satellites has three space stations on the Permitted List (NSS-806 @ 40.5° W.L., NSS-5 @ 177° W.L. and NSS-7 @ 22° W.L.). Therefore, of the more than 9200 earth stations that have ALSAT authority, any one of these earth stations can communicate with these New Skies satellites without any further authorization. In addition, we note that earth stations are required to seek specific authority instead of ALSAT authority if the earth station can not meet the technical requirements for an ALSAT license and/or if the earth station sought to communicate with a satellite in bands other than the conventional C and Ku-Bands. Some examples of authorizations granting specific access to New Skies Satellites are: Radio Sol 92 WZOL, Inc., SES-LIC-20051025-01474, authority granted on March 6, 2006 to communicate with the New Skies 806 satellite at 319.5° E.L.; Intelsat LLC, SES-LIC-20060203-00200, authority granted on March 17, 2006 to communicate with the NSS 7 satellite at 22.0° W.L.

⁵⁸ See Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214, *Order and Authorization*, 15 FCC Rcd 22910 (2000), *erratum*, 15 FCC Rcd 23506 (Sat. and Radio. Div., 2000); *recon. denied*, 17 FCC Rcd 13160 (2002).

⁵⁹ Public Notice, Report No. SES-00288, May 16, 2001.

- On December 18, 2001, the Commission granted the applications filed by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services AS, to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor.⁶⁰ This proposed assignment was in connection with Telenor's proposed acquisition of Comsat Mobile Communications ("CMC"), a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.⁶¹
- On May 28, 2004, COMSAT General Corporation, Lockheed Martin, COMSAT New Services, Inc. and Intelsat LLC and Intelsat MTC LLC filed a series of applications associated with a transaction by which Intelsat, Ltd. would acquire Lockheed Martin's COMSAT General businesses.⁶² On October 27, 2004, the Commission granted the applications, subject to compliance by Intelsat LLC, Intelsat MTC LLC and Intelsat Government Solutions Corporation with the terms of the Intelsat Commitment letter with the Criminal Division of the U.S. Department of Justice, the U.S. Department of Homeland Security, and the Federal Bureau of Investigation.⁶³ On October 29, 2004, the transaction was completed.⁶⁴

Direct Access

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity.⁶⁵ Previously, the Commission decided in a rulemaking proceeding that Level 3 direct access is in the public interest.⁶⁶ The concept

⁶⁰ Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land MobileRadio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, *Order and Authorization*, 16 FCC Rcd 22897 (2001), *erratum*, 17 FCC Rcd 2147 (Int'l Bur. 2002).

⁶¹ See Comments Invited on Telenor Satellite Services Holdings, Inc. Petition for Declaratory Ruling on Inapplicability of Cost Accounting Requirements, *Public Notice*, 17 FCC Rcd 2444 (2002).

⁶² Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC, Seek FCC Consent to Assign Licenses and Authorizations and a Declaratory Ruling on Foreign Ownership, Pleading Cycle Established, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 11390 (2004).

⁶³ Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership, Authorizations Granted, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 21216 (2004).

⁶⁴ *Intelsat, Ltd. Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2004*, at 94.

⁶⁵ 47 U.S.C. § 765(a).

⁶⁶ Direct Access to the INTELSAT System, *Report and Order*, IB Docket No. 98-192, 15 FCC Rcd 15703 (1999). Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with (Continued)

of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat LLC, as a private company, does not have Signatories.

- Prior to INTELSAT's privatization, the Commission implemented the requirement in Section 641(b) of the ORBIT Act that the Commission complete a rulemaking "to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment directly from INTELSAT to meet their service or capacity requirements."⁶⁷ In September 2000, the Commission released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions.⁶⁸
- On March 13, 2001, Comsat submitted a report detailing the results of its negotiations and maintaining that direct access opportunities are increasing for those who want them. For example, the negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat's report on public notice, including Comsat's request to terminate the proceeding.⁶⁹ With INTELSAT's privatization and Intelsat Ltd.'s purchase of Comsat,⁷⁰ on November 21, 2002, the Commission released an Order that concluded that the underlying basis for Section 641(b) no longer existed, and terminated the proceeding.⁷¹ In terminating the proceeding, the Commission noted that the termination does not imply any abdication of the Commission's appropriate oversight of Intelsat Ltd., and that as a U.S. licensee, Intelsat Ltd., will be subject to the same Commission oversight as any similarly-situated company authorized to provide services in the United States.

Regulatory Fees

- The ORBIT Act authorizes the Commission "to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services."⁷² On July 10, 2000, the Commission released an Order concluding that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate

(continued from previous page)

INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman.

⁶⁷ 47 U.S.C. § 765(b).

⁶⁸ Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Report and Order*, IB Docket No. 00-91, 15 FCC Rcd 19160 (2000).

⁶⁹ Public Notice, Report No. SPB-166, April 6, 2001.

⁷⁰ On October 25, 2002, the Commission approved the assignment of various earth station licenses, private land mobile radio licenses and international 214 applications from Comsat Corporation to Intelsat, Ltd.

⁷¹ Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Order*, IB Docket No. 00-91, 17 FCC Rcd 24242 (2002).

⁷² 47 U.S.C. § 765a(c). A 1999 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission's 1998 fee order, which did not assess a fee against Comsat.

geosynchronous space stations.⁷³ Consistent with past decisions, the Commission stated that the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities and are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees.⁷⁴ In 2002, the Circuit Court of Appeals for the District of Columbia held that the Commission's actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, as amended, favoring recovery of regulatory costs gave the Commission good reason to require Comsat to bear its proportionate share of space station fees.⁷⁵

- Post-privatization, Intelsat, as a U.S. licensee, has paid the required regulatory fees mandated by Section 9 of the Communications Act 1934.

B. Status of INTELSAT Privatization

Intelsat privatized and became a U.S. licensee, as of July 18, 2001, transferring its assets to a commercial corporation. Pursuant to international agreement, an intergovernmental organization remained known as the International Telecommunications Satellite Organization ("ITSO"). ITSO, through a "Public Services Agreement" with Intelsat LLC, monitors the performance of the company's public service obligations to maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation to certain customers, specifically, those customers in poor or underserved countries that have a high degree of dependence on Intelsat LLC.⁷⁶ Under these commitments, the privatized Intelsat LLC keeps capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years. ITSO has no operational or commercial role.

Upon privatization, substantially all of INTELSAT's operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. The companies have created fiduciary Boards of Directors and based on the record before us, the selection procedure for members of the Board of Directors of Intelsat, Ltd. has resulted in a board that is compliant with the ORBIT Act. In addition, our review of the record before us supports our finding that privileges and immunities enjoyed by the pre-privatized INTELSAT had been terminated consistent with the requirements of the ORBIT Act. The licensed companies have licenses through notifying Administrations in countries (United States and the United Kingdom) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets.⁷⁷ These companies are subject to U.S. or U.K. licensing authorities and conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

⁷³ *In re* Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 00-58, 15 FCC Rcd 6533 (para. 17) (2000).

⁷⁴ *Id.*

⁷⁵ *See Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

⁷⁶ *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00, para. 6-8 (Nov. 27, 2000) ("2000 Assembly Decision").

⁷⁷ *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

Additionally, as detailed above, at the end of 2004 the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus, and the transaction was consummated in 2005.⁷⁸ As also detailed above, in 2005, the Commission determined that Intelsat's certification complied with the ORBIT Act and it could forgo an IPO and listing of securities.⁷⁹ Thus, the Commission concluded that the provisions relating to additional services under Section 602 of the ORBIT Act were no longer applicable to Intelsat.⁸⁰

II. Views of INTELSAT Parties on Privatization

The Commission, in response to the Public Notice for this Report to Congress, has not received any views directly from INTELSAT Parties⁸¹ regarding privatization. The Commission has, however, received comments from the International Telecommunications Satellite Organization ("ITSO") concerning potential effects of Intelsat's proposed acquisition of PanAmSat on Intelsat's fulfillment of its obligations under the Public Service Agreement. The issues raised by ITSO have also been raised in the context of the Intelsat/PanAmSat Transfer of control transaction, which is pending before the Commission.⁸²

III. Views of Industry and Consumers on Privatization

As previously noted, Inmarsat, Intelsat, and MSV responded to the Commission's public notice inviting comments related to the development of this Report to Congress.⁸³ Reply comments were filed by Intelsat and Inmarsat.⁸⁴

Intelsat Privatization Comments

Intelsat maintains that it has fully privatized consistent with the purposes of the ORBIT Act. It also contends that as a privatized entity, it continues to face intense competition in the commercial environment. This competition comes from traditional providers of satellite services, as well as newer providers and resellers of satellite services. Intelsat further asserts that it also faces significant competition from terrestrial sources, such as fiber optic cable, broadband-enabled IP applications and terrestrial wireless platforms. Additionally, Intelsat maintains that since privatization, it continues to respond to these competitive market forces. Intelsat notes that, most recently, it has announced its

⁷⁸ See page 5-6 above.

⁷⁹ See page 6 above and footnote 30.

⁸⁰ *Id.*

⁸¹ The INTELSAT Parties are nations for which the INTELSAT agreement has entered into force. 47 U.S.C. § 769(a)(4)(A). Following privatization, the ITSO Agreement defines "Party" to mean a State for which the ITSO Agreement has entered into force or has been provisionally applied. *See* Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (Nov. 17, 2000), at Art. I(p).

⁸² We note that in its reply, Intelsat responds to a number of arguments that ITSO makes in its comments. These also relate to the Intelsat/PanAmSat Transfer of Control transaction which is pending.

⁸³ *See* note 13 above.

⁸⁴ *See* note 14 above.

intention to acquire PanAmSat Holding Corporation (“PanAmSat”) and that the Commission is currently reviewing its applications for the transfer of control of FCC licenses held by PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp to Intelsat.⁸⁵

Inmarsat Privatization Comments

Inmarsat notes that in June 2005, the Commission determined that Inmarsat’s privatization was consistent with the non-IPO criteria specified in Sections 621 and 624 of the ORBIT Act, as amended, in part, because the Commission found that former Inmarsat Signatories no longer held a majority of financial interests in, or controlled, Inmarsat. Inmarsat also maintains that since the Commission’s June 2005 decision, ownership of Inmarsat has become more broadly diversified. Inmarsat further states that shortly after the Commission determined that Inmarsat met the applicable ORBIT Act criteria, Inmarsat completed a successful IPO, resulting in a listing of Inmarsat shares on the London Stock Exchange. As a result of this IPO, Inmarsat contends that the remaining interests of former Inmarsat Signatories and foreign government entities that owned Inmarsat shares were diluted.⁸⁶

Additionally, Inmarsat maintains that it continues to provide a wide range of services to users with mobile communications needs. Inmarsat states that both the private and public sectors use the Inmarsat system for various communications purposes, including, aeronautical and maritime navigation, distress messaging, search and rescue reporting coordination, remote reporting, streaming video, Internet access, and voice communications. Further, Inmarsat points out that its services have been of critical importance to public safety, military, governmental, humanitarian, and commercial users. Inmarsat maintains that its MSS system provides crucial communications support, when terrestrial communications services are precluded as a result of natural or man made disasters. Additionally, Inmarsat states that, users such as, the United States military and Coast Guard, the Federal Emergency Management Administration (“FEMA”), Red Cross, the New York City Fire Department and others rely on Inmarsat for their critical communications needs. Specifically, in the aftermath of last year’s hurricanes Katrina, Rita and Wilma, when terrestrial networks were unavailable, FEMA, the National Guard, the United States Army, and others used Inmarsat services to facilitate voice communications and internet access.

Further, Inmarsat states that its BGAN service was successfully deployed internationally with the launch of two Inmarsat-4 satellites, in March 2005 and November 2005.⁸⁷ Inmarsat notes that Inmarsat resellers have pending applications to provide BGAN service in the United States.⁸⁸ Inmarsat states that its current services in the United States will be further enhanced by the proposed BGAN services.⁸⁹ Since the filing of Inmarsat’s comments, we note that as described above, the Commission has granted Inmarsat

⁸⁵ Intelsat Comments 2-4.

⁸⁶ Specifically, Inmarsat notes that after the IPO, no Inmarsat shareholder now owns 10 percent or more of the company. Additionally, Inmarsat contends that today, 7 percent of its shares are owned, in the aggregate by former Signatories, while in last June, prior to the IPO, former Signatories owned, in the aggregate, 42.54 percent of Inmarsat shares. Inmarsat Comments at 2.

⁸⁷ Inmarsat Comments at 3-4.

⁸⁸ See note 44 for list of applications.

⁸⁹ Inmarsat Comments at 3-4. As mentioned above, MSV filed comments, and Inmarsat responded to these comments. The issues raised by such comments directly relate to the pending applications filed by the Inmarsat resellers. See note 44.

resellers special temporary authority to provide BGAN services in the United States subject to conditions.⁹⁰

IV. Impact of Privatization

Section 646 requires that the Commission report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

INTELSAT's privatization from an intergovernmental organization to a fully commercial operation has enabled it to more effectively compete to provide services to U.S. commercial and governmental customers. Privatization has enabled Intelsat to compete freely for U.S. satellite business opportunities, thereby increasing competition in the U.S. market and encouraging the development of service offerings to U.S. customers. Further, the geographic location of Intelsat service and licensing companies in the United States contribute to jobs and productivity increases in the United States.

Inmarsat's privatization also appears to have had a positive impact on the domestic U.S. market.⁹¹ Privatization has provided Inmarsat the opportunity to develop new services for the U.S. market that potentially will result in the expansion of service options and providers for U.S. customers. This also promises to lead to increased industry competition. As a result of privatization and Commission authorization, distributors were given access rights to distribute Inmarsat services in the United States.

Inmarsat maintains that its services promote economic growth and job development in the United States. Inmarsat describes the use of Inmarsat's system in the Deere Company's precision farming service, and the use of Inmarsat's system for ship operations and crew calling by U.S.-flag vessels. Inmarsat also points to use of its system in managing the sustainability of fisheries, and the use of portable terminals in remote regions by U.S. companies in energy, mining exploration, construction, and journalism activities.

In its capacity as Notifying Administration to the ITU for Intelsat's fixed satellite service C-and Ku-band frequency assignments transferred at privatization, the Commission has participated in a number of international coordination negotiations as Intelsat's licensing Administration. Since the 2005 Report to Congress, the Commission has participated in coordination meetings with Malaysia and the United Kingdom on behalf of Intelsat and a number of other U.S. licensees. In fact, a coordination agreement has been concluded with the United Kingdom.

The United States has, in place, a coordination process whereby operators may reach operational arrangements with operators of other Administrations. These arrangements are then submitted to the operators' respective Administrations for approval. Once approved by both Administrations, the operational arrangements become, or form the basis for, a coordination agreement between the Administrations under the ITU procedures. Since the 2005 Report to Congress, Intelsat has participated in meetings with operators from Belarus, Canada, Israel, and the United Kingdom. In addition, Intelsat has concluded operational arrangements by correspondence with Canada and Belarus. In due course, this will lead to coordination agreements between the United States and these foreign Administrations.

⁹⁰ See page 10 and notes 45 and 47 above for a list of STAs and related text for description of action.

⁹¹ Inmarsat Comments at 4-5.

Finally, both Inmarsat's and INTELSAT's privatization appears to have had a positive impact on the global marketplace for communications services by ensuring increased competition and increased access. Inmarsat and Intelsat have placed a priority on continued provision of service to all portions of the globe. Additionally, Inmarsat states that it is committed to support global maritime distress and safety services ("GMDSS").⁹² We also note that the ITSO Assembly of Parties continues to maintain that Intelsat should be contractually bound under a Public Service Agreement with the International Telecommunications Satellite Organization to ensure continued global connectivity -- particularly to countries dependent on Intelsat's satellite services.⁹³

V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the ORBIT Act. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

Enclosures: Comments received in response to the Commission's Public Notice regarding the development of this report.

⁹² *Inmarsat Finance plc. Offering Circular for 7 5/8% Senior Notes*, January 27, 2004, p. 114.

⁹³ ITSO Assembly of Parties, Record of Decision of the Twenty-Ninth Meeting, Document AP-29-3E, Agenda Item No. 8, paragraph 36. (dated February 6, 2006).

ATTACHMENTS:

Comments, March 30, 2006

Comments of Intelsat LLC

Comments of Inmarsat PLC

Comments of the International Telecommunications Satellite Organization

Comments of Mobile Satellite Ventures Subsidiary

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re:)
)
 Report to Congress Regarding the) IB Docket No. 06-61
 ORBIT Act)

COMMENTS OF INTELSAT

Intelsat LLC and its affiliated entities (collectively, "Intelsat") hereby respond to the Federal Communications Commission's ("FCC" or "Commission") request for comments in the above referenced proceeding.¹ The Commission seeks comments in order to compile its seventh report to Congress pursuant to Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act").²

Consistent with the purpose of the ORBIT Act, Intelsat is fully privatized and subject to intense competition in the commercial environment produced by privatization. As a privatized entity, Intelsat's competition comes from traditional providers of satellite services (*e.g.*, SES Global, Eutelsat, Telesat Canada, Satmex and a host of regional

¹ International Bureau Information: Report to Congress Regarding the ORBIT Act, DA 06-559, Report No. SPB-215 (Mar. 9, 2006) (Public Notice).

² Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004), *as amended*, Pub. L. No. 109-34, 119 Stat. 377 (2005).

satellite systems), as well as newer providers and resellers of satellite services (e.g., Loral Skynet, EchoStar Communications Corporation and DIRECTV). Intelsat also faces increasingly significant competition from terrestrial sources, such as fiber optic cable, broadband-enabled IP applications and terrestrial wireless platforms.

Intelsat continues to respond to these competitive market forces. Since Intelsat last filed comments in April 2005, it has announced that it intends to acquire PanAmSat Holding Corporation ("PanAmSat") to create a premier satellite company that will be a leader in the digital delivery of video content, the transmission of corporate data and the provisioning of government communications solutions.³

On September 30, 2005, Intelsat and PanAmSat jointly filed a consolidated application for Commission consent to the transfer of control to Intelsat of the PanAmSat entities that hold FCC licenses.⁴ In the application, Intelsat and PanAmSat explained that the merger of the complementary assets and expertise of the two companies will result in a number of public interest benefits.⁵ For example, the combination of the two fleets will allow the merged entity to increase the output of currently under-supplied services that

³ See Press Release, Intelsat, Intelsat and PanAmSat to Merge, Creating World-Class Communications Solutions Provider (Aug. 29, 2005), available at http://www.intelsat.com/press/release_details.aspx?year=2005&art=20050829_01_En.xml (last visited Mar. 28, 2006).

⁴ See *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Seek FCC Consent to Transfer Control of Licenses and Authorizations Held by PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, IB Docket No. 05-290, DA 05-2715 (Oct. 14, 2005) (Public Notice).

⁵ See *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control*, at 14-22 (filed Sept. 30, 2005).

would not otherwise be available, such as additional protected C-band capacity in the U.S. cable arc.⁶ In addition, strategic redeployment of satellites to maximize back-up capabilities will provide customers with more reliable service and well as more flexibility to meet shifting geographic needs.⁷ Finally, the merger will drive innovation and create operational efficiencies that will benefit customers.⁸

During the Commission's public comment period, no party opposed the transaction.⁹ Indeed, the commenters, which included numerous customers of Intelsat and/or PanAmSat, overwhelmingly filed in support of the acquisition.¹⁰ As significantly, commenters noted that the merger would not harm competition.¹¹

⁶ *Id.* at 16-17.

⁷ *Id.* at 17-20.

⁸ *Id.* at 20-23.

⁹ Two parties – the International Telecommunications Satellite Organization (“ITSO”) and Microcom – suggested conditions be imposed as part of any grant. *See* Comments of ITSO, IB Docket No. 05-290, at 1-2 (filed Oct. 31, 2005) and Comments of Microcom, IB Docket No. 05-290, at 1 (filed Oct. 31, 2005). As Intelsat and PanAmSat explained in their Joint Response, however, the proposed conditions do not respond to demonstrated harms cognizable to the transaction and are unnecessary. *See* Joint Response of Intelsat and PanAmSat, IB Docket No. 05-290, at 5-14 (filed Nov. 29, 2005).

¹⁰ *See, e.g.*, Comments of ARTEL Inc., IB Docket No. 05-290, at 2 (filed Nov. 14, 2005).

¹¹ *See, e.g.*, Letter from Loral Space & Communications, Ltd. to Donald Abelson, FCC Int'l Bur., IB Docket No. 05-290, at 2 (filed Nov. 14, 2005).

In short, Intelsat's privatization continues to have a positive impact on the global marketplace for communications services. The acquisition of PanAmSat will allow Intelsat to offer expanded communications services, thus increasing competition in the market. This, in turn, benefits consumers, who have more choices available to them at more competitive prices.

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Its Attorneys

March 30, 2006

Before the
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

In the Matter of)	
)	
Report to Congress Regarding)	IB Docket No. 06-61
the ORBIT Act)	

COMMENTS OF INMARSAT PLC

Inmarsat plc (formerly Inmarsat Group Holdings Limited) ("Inmarsat") submits these Comments in response to the Public Notice inviting input to be reflected in the Commission's progress report to Congress on the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").¹

I. SUBSTANTIAL DILUTION OF FORMER SIGNATORY AND GOVERNMENT OWNERSHIP

One of the purposes of the ORBIT Act is to "promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing . . . Inmarsat."² In granting United States market access to the Inmarsat system in 2001, the Commission determined that the presence of Inmarsat in the United States market "serve[s] the public interest by increasing competition and providing additional services for U.S. consumers,"³ and that "Inmarsat's privatization . . . is consistent with the non-IPO criteria of the [ORBIT] Act."⁴ After the ORBIT Act was amended to expressly allow substantial dilution of former Signatory interests to occur through means other than an equity IPO, the Commission found in June 2005 that Inmarsat had met the final ORBIT

¹ Public Notice, Report No. SPB-215, DA 06-559 (rel. Mar. 9, 2006).

² *Id.* at 1.

³ See *Comsat Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661, ¶ 1 (2001).

⁴ *Id.* ¶ 55

Act compliance criterion because former Inmarsat Signatories no longer held a majority of financial interests in, or controlled, Inmarsat.⁵

In the past nine months, ownership of Inmarsat has become even more broadly diversified, thereby further reducing the previous ownership by former Signatories and foreign governments. In June 2005, just days after the Commission found Inmarsat had satisfied each of the applicable ORBIT Act criteria, Inmarsat completed one of the most successful equity IPOs by a satellite services company, resulting in the listing of Inmarsat shares on the London Stock Exchange. As a consequence, all of Inmarsat's shares are now eligible for trading on the London Stock Exchange. This IPO diluted the remaining interests of former Signatories and foreign governmental entities that owned Inmarsat shares. In addition, a number of Inmarsat shareholders sold portions of their holdings in subsequent transactions. As a result, no Inmarsat shareholder now owns 10 percent or more of the company. This compares very favorably with the situation in June 2005 when four shareholders, including two former Signatories, each held more than 10 percent of Inmarsat's shares.⁶ Furthermore, just last June, former Signatories owned, in the aggregate, 42.54 percent of Inmarsat's shares.⁷ Today, in contrast, Inmarsat is aware of a mere 7 percent of its shares that are owned, in the aggregate, by former Signatories.⁸ Similarly, the only direct and indirect government ownership of Inmarsat of which Inmarsat is aware amounts to less than 3 percent of the company.

⁵ *Inmarsat Group Holdings Limited, Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the ORBIT Act*, 20 FCC Rcd 11366 (2005).

⁶ *Id.* ¶¶ 12, 15 (citing then current holdings by former signatories Telenor (14.95 percent) and COMSAT (13.96 percent) and by private equity firms Apax Partners and Permira (each with 25.87 percent)).

⁷ *Id.* ¶ 15.

⁸ Because Inmarsat shares are publicly traded, small individual ownership positions acquired in the public market may not be known to Inmarsat.

Thus, Inmarsat has continued to advance the privatization goals of the ORBIT Act.

II. PROMOTING ECONOMIC GROWTH THROUGH INNOVATIVE SERVICE OFFERINGS

Inmarsat offers a wide range of services to users with mobile communications needs or who are beyond the reach of terrestrial communications networks, whether those users are on land, at sea, or in the air, and wherever those users are located around the world. Governments, companies and individuals currently use the Inmarsat system for diverse communications purposes, including aeronautical and maritime navigation, distress messaging, search and rescue operation coordination, remote reporting, streaming video, Internet access and voice communications. The United States military and Coast Guard, the Federal Emergency Management Administration (FEMA), U.S. Executive Branch and Congressional officials, The New York City Fire Department, the Cable News Network, National Public Radio, the Red Cross, and nearly every major airline and shipping line are examples of the users who rely on Inmarsat for their critical communications needs. Where no other communication service will reach, where weather or disasters preclude use of terrestrial networks, and where highly secure communications are needed, Inmarsat's MSS system provides a vital, instantaneously-available, and reliable link for private and governmental users alike.

Inmarsat continued its track record of innovation with the successful launch of two Inmarsat-4 ("I-4") spacecraft on March 11, 2005 and November 8, 2005. The new I-4 spacecraft are the most advanced commercial communications satellites currently in orbit, and make possible Inmarsat's Broadband Global Area Network ("BGAN") service. BGAN is a broadband MSS service capable of speeds of almost half a megabit per second to satellite earth terminals that are one third the price, size and weight of those previously deployed for use on the Inmarsat system. Inmarsat currently provides BGAN service to Asia, Africa, Europe and the

Middle East. Inmarsat also stands at the ready to commence provision of BGAN service to the United States, pending approval of applications submitted by Inmarsat's United States distribution partners for Commission consent to do so.

Last year's natural disasters associated with hurricanes Katrina, Rita and Wilma in the Gulf of Mexico region demonstrate an urgent need for BGAN and provide compelling reasons that the pending BGAN applications should be granted promptly, and before the beginning of the 2006 hurricane season. In the aftermath of last year's hurricanes, Inmarsat services were used by FEMA, the National Guard, the United States Army, state and local governments, law enforcement personnel and the petroleum industry to facilitate voice communications and Internet access while terrestrial networks were unavailable or degraded. The vital role in recovery and restoration efforts performed by Inmarsat's current services will be further enhanced by the even better performance that will be possible over BGAN. With the higher data-rate capabilities and smaller, easier to use mobile terminals afforded by BGAN, first responders and private industry around the world have available a more robust and quickly deployable communications alternative when the next natural disaster, or other domestic crisis, occurs. Once authorized by the Commission, BGAN service will be a critical tool for first responders and industry in the United States.

Inmarsat's services promote economic growth and job development in the United States in a number of respects, positive effects that have accelerated with the launch of the I-4 satellites and BGAN. The following are just a few examples. The Deere Company uses Inmarsat's satellite communications for its precision farming service. United States flag vessels have integrated Inmarsat communications into ship operations and to provide crew calling. The Vessel Monitoring System that industry and government rely on to manage the sustainability of

fisheries by tracking commercial fishing vessels and enforcing fishing regulations uses Inmarsat's satellite network. Portable Inmarsat terminals are used in remote regions around the world by American companies engaged in energy and mining exploration and construction projects, and by journalists for digital news gathering. Moreover, Inmarsat works with dozens of service distributors, equipment suppliers, and applications developers across the United States, each of whose participation in the Inmarsat program produces jobs and stimulates new economic growth opportunities.

* * *

Inmarsat respectfully submits the above information to assist the Commission in preparing its forthcoming report to Congress.

Respectfully submitted,

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March 30, 2006

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re:

IB Docket No. 06-61

Report to Congress Regarding the ORBIT Act

**COMMENTS OF THE INTERNATIONAL TELECOMMUNICATIONS
SATELLITE ORGANIZATION (ITSO)**

ITSO would like to thank the Federal Communications Commission ("FCC") for the opportunity to comment on the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act"). ITSO considers the ORBIT Act to be one of the most important legislative acts impacting global satellite communications. While the ORBIT Act, with the willingness of ITSO's 148 nations, has achieved its goal to fully privatize INTELSAT, ITSO believes that there still is work to be done to extend the benefits of this legislation to all nations of the world and their consumers.

**1. ORBIT ACT MANDATES DILUTION OF INTELSAT OWNERSHIP IN
ORDER TO PROMOTE COMPETITION AND NOT TO EXCLUDE THE
INTERESTS OF INTERNATIONAL AND SMALL USERS**

The ORBIT Act, in Section 621 (2), mandates the dilution of ownership of the former "signatories" in the privatized Intelsat, initially through a public offering (IPO) by October 2001, in order to ensure the operation of an independent commercial Intelsat entity with a pro-competitive ownership structure. This dilution of ownership was

intended to reduce the potential conflict of interest of those signatories that were both users and shareholders, in order to promote competition. While no level of dilution was specified by the ORBIT Act, the FCC has interpreted the “substantial dilution” requirement of the ORBIT Act in the case of New Skies’ initial public offering, in which a 23% sale of shares was considered a substantial dilution of New Skies’ former signatory ownership.

Intelsat’s acquisition, through a leveraged buy-out by a consortium of four private equity funds in January 2005, resulted in a 100% change of ownership. The effect of this transaction, not contemplated by the ORBIT Act prior to its amendments or by the Assembly of Parties at the time of INTELSAT’s privatization, is that Intelsat did not become a public company.

Thus, this change of ownership appears to be at odds with some of the main principles underlying the privatization of INTELSAT. In fact, the new Board of Directors of Intelsat is no longer reflective of the geographical diversity of its users nor of its small users, as was agreed prior to INTELSAT’s privatization.¹ Further, a single private equity investor group was able to modify Intelsat’s Bye-laws to delete the corporate objective ensuring that Intelsat, Ltd. honor its Public Service Obligations far into the future, which cannot be changed except through a vote of 100% of the

¹ Prior to privatization, the Assembly of Parties endorsed the Board of Governors’ decisions “with respect to the overall composition of the Board [of Intelsat, Ltd.], the Nominating Committee shall take into account the following principles: (1) The Board should reflect a diversity of geographic location on a regional basis; and (2) The Board should represent the interests of shareholders of all sizes.” Document AP-25-3E, para. 13, and AP-25-10E, para. 110(a)(vii) (November 2000).

shareholders.² In addition, since the change in ownership, actions have been taken by Intelsat in contradiction to the Public Service Obligations.

2. ORBIT ACT PROMOTES COMPETITION AS A MEANS TO IMPROVE SERVICES AND LOWER ACCESS PRICES

The goal of the ORBIT Act is to improve services and market access. However, the coverage and connectivity of Intelsat's satellites in the Asia Pacific region has declined, and there is now only one Intelsat non-inclined orbit satellite servicing this region, down from three satellites. The African region continues to lack Ku-band coverage and intra-continental connectivity. Intelsat's focus now appears to be on highly profitable niche markets, such as high definition television ("HDTV") and corporate services.³

Further, Intelsat's fleet currently is comprised of 28 satellites, of which 16 will reach their end-of-operational life by the year 2010.⁴ Intelsat has reduced its capital expenditure (CAPEX) projections to approximately \$85 million in 2005 and less than \$100 million per year for the next several years thereafter,⁵ which may be insufficient to

² Prior to privatization, the Assembly of Parties noted that, "to ensure that Intelsat, Ltd. honors its Public Service Obligations far into the future, language has been added to the Bye-laws stating that this provision cannot be changed except through a vote of 100% of the shareholders." Document AP-25-3E, para. 8(d)(ii) (November 2000).

³ Prior to privatization, INTELSAT dedicated up to 5% of its revenue to support satellite communications in developing countries, including training (e.g., Intelsat's Assistance and Development Program – IADP) and operational assistance. Further, INTELSAT regularly contributed to its internal R&D programs to advance satellite communications technologies, which benefited developed and developing countries.

⁴ Form 20-F Annual Report of Intelsat, Ltd. filed with U.S. Securities and Exchange Commission (SEC), page 35 (15 March 2005).

⁵ Form 10-Q, Quarterly Report of Intelsat, Ltd. filed with SEC, pages 31-32 (11 August 2005).

fund a reinvestment program for its expiring satellites. Intelsat also now projects that it will be paying almost \$1 billion a year in interest payments.⁶

Lower access prices have not materialized for many customers with “lifeline connectivities” (“LCO customers”) that are most often without the means of market competition. The average price per 36 MHz transponder satellite capacity in general, and of Intelsat in particular, has declined from \$1.9 million to \$1.2 million between 2000 and 2004.⁷ Yet, those LCO customers have not had price reductions since privatization.⁸

3. ORBIT ACT ENVISIONS INTELSAT'S COMMITMENT TO SERVE ITS PUBLIC SERVICE MISSION

To fulfill its public service mission prior to privatization, Intelsat enjoyed priority access to geostationary orbital locations and associated radio spectrum, due to its legacy status. As a result, INTELSAT had accumulated a patrimony of uniquely-positioned

⁶ Intelsat Subsidiary Holding Company, Ltd. filing with SEC to Offer to Exchange Floating Rate Senior Notes, Prospectus (10 February 2006), at page 33, projecting “approximately \$914 million of interest payments” in addition to principal payments and payments related to satellite performance incentives due to satellite manufacturers. Page 31 notes that, as a result of the PanAmSat merger, “Intelsat, Ltd. would have had approximately \$11.4 billion principal amount of indebtedness.”

⁷ U.S. Congressional testimony of CEO of New Skies Satellites B.V., on a panel with a representative from Intelsat, Ltd., before U.S. Congress House Committee on Energy and Commerce Subcommittee on Telecommunications and the Internet, stating: “Our average annual rate for a transponder sold in 2000 ... was \$1.9 million; in 2004, the rate was \$1.2 million, a nearly 40 percent decrease.” Page 8 (14 April 2005).

See also quotes of Mr. Conny L. Kullman, CEO of Intelsat, Ltd.: “an average 36-megahertz transponder was selling for \$1.25 million per year, down slightly from the \$1.3 million average price reported for 2002.” Space News (5 May 2003); and “Intelsat, which is facing competition from cable as well as other satellite operators in its historic telecommunications services business, leases its transponders at an average price of \$1.3 million per year for 36 megahertz of capacity.” Space News (17 November 2003).

⁸ The FCC’s 2005 ORBIT Act Report contained an error in the statement that “the lifeline users are only committed for its capacity on a year-to-year basis at their option.” See *FCC Report to Congress as Required by the ORBIT Act*, FCC 05-127, page 12 (June 15, 2005). In fact, the LCO contracts are not on a year-to-year basis, but, in fact, are for multi-year commitments that cannot be cancelled without significant penalties.

orbital locations and associated radio spectrum that currently provides Intelsat, Ltd. with unparalleled competitive advantage over other satellite operators. As a result of the privatization process, of which the ORBIT Act was integral, the member States of ITSO authorized Intelsat, Ltd. to continue its use of this patrimony, free of charge, in exchange for Intelsat's agreement to fulfill its Public Service Obligations. Indeed, without Intelsat's agreement to abide by its Public Service Obligations, with a legally-enforceable agreement in place prior to privatization, the majority of ITSO's member States may not have approved the privatization process.

4. INTELSAT AND PANAMSAT MERGER SHOULD REFLECT THE SPIRIT AND INTENT OF THE ORBIT ACT

The rationale for the ORBIT Act – to promote competition for users of satellite services – may be impacted by the current trend of consolidation in the satellite industry. For example, PanAmSat has been a dynamic competitor of Intelsat, and this competition has contributed in general to the improvement of satellite communications, and in particular, to Intelsat's performance. Currently, countries around the world that are served by both Intelsat and PanAmSat are able to benefit from the price and technology competition between these two companies.

Further, the financing of the proposed Intelsat/PanAmSat merger through additional debt potentially could place Intelsat in vulnerable situation,⁹ and as such, the

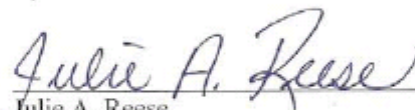
⁹ See "Takeover Artists Quench Thirst – Many Private-Equity Firms Drain Out Dividends and Fees, Saddling Companies with Debt," Wall Street Journal (5 January 2006). "In a technique practically unheard of just five years ago, private-equity firms, emboldened by easy financing, are paying themselves lavish dividends and fees from the companies they acquire. ... Some worry that by heaping enormous debt onto their portfolio companies to help pay the dividends, private-equity firms heighten the risk that the companies may fail if the economy stumbles."

ongoing review by the U.S. authorities of this merger should address the maintenance of global coverage and global connectivity, which is at the core of the ORBIT Act. Thus, the Public Service Obligations and the Common Heritage orbital locations and associated radio spectrum need to be protected in case of an Intelsat bankruptcy proceeding involving the new merged company.¹⁰

In closing, ITSO would like to renew its interest and commitment to discuss these issues with the FCC, and remains confident in the FCC's leadership to ensure that the goals of the ORBIT Act are fulfilled for the benefit of all nations of the world.

Respectfully submitted,

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March 30, 2006

See also, "Risk Factors" in Intelsat Subsidiary Holding Company, Ltd. SEC Filing Offer to Exchange Floating Rate Senior Notes, Prospectus (10 February 2006), at page 30, stating: "We have a substantial amount of indebtedness, which may adversely affect our cash flow and our ability to operate our business, remain in compliance with debt covenants and make payments on our indebtedness, including the notes." Page 33 further states: "To service our indebtedness, we will require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control, and any failure to meet our debt service obligations could harm our business, financial condition and results of operations.

¹⁰ See ITSO Comments to FCC in the Matter of the PanAmSat/Intelsat Proposed Merger, IB Docket No. 05-290 (14 November 2005), and ITSO Reply Comments to FCC (6 December 2005).

CERTIFICATE OF SERVICE

I, Julie A. Reese, do hereby certify that on this 30 day of March, 2006, I sent, via electronic mail, a true and correct copy of the foregoing Comments of the International Telecommunications Satellite Organization to the following:

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Before the
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Washington, DC 20554

In the matter of)	
)	
Report to Congress Regarding)	IB Docket No. 06-61
The ORBIT Act)	

COMMENTS OF MOBILE SATELLITE VENTURES SUBSIDIARY LLC

Mobile Satellite Ventures Subsidiary LLC (“MSV”)¹ hereby submits these comments in connection with the Commission’s Report to Congress pursuant to Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“the ORBIT Act”).² As discussed herein, despite the fact that the Commission has found Inmarsat in compliance with the ORBIT Act, Inmarsat continues to undercut the goals of the ORBIT Act by using shared L band spectrum in an anti-competitive fashion.

¹ MSV is the entity authorized by the Commission in 1989 to construct, launch, and operate a U.S. mobile satellite service (“MSS”) system in the L-band. MSV’s licensed satellite (AMSC-1) was launched in 1995, and MSV began offering satellite service in 1996. MSV is also the successor to TMI communications and Company, Limited Partnership (“TMI”) with respect to TMI’s provision of L-band MSS in the U.S. Today, MSV offers a full range of land, maritime and aeronautical MSS, including voice and data, throughout the United States, including the Virgin Islands and coastal areas up to 200 miles offshore. In November 2004, MSV became the first entity licensed to operate an Ancillary Terrestrial Component (“ATC”). In January 2005, the Bureau licensed MSV to launch and operate an L band MSS satellite at 63.5°WL (called “MSV-SA”) to provide MSS in South America. In May 2005, the Bureau licensed MSV to launch and operate a replacement L band MSS satellite at 101°WL (called “MSV-1”). MSV recently announced that it has entered into a contract with Boeing Satellite Systems, Inc. for the construction and delivery of three next generation, transparency class L band satellites to serve the Western Hemisphere. The satellites will be among the largest and most powerful commercial satellites ever built.

² Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004). *See Report to Congress Regarding the ORBIT Act*, Public Notice, Report No. SPB-215, DA 06-559 (March 9, 2006).

Background

The purpose of the ORBIT Act, enacted by Congress in March 2000, is “to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment.”³ Congress sought to achieve this goal by “fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”⁴ Congress recognized in the ORBIT Act that Inmarsat, as a former intergovernmental organization (“IGO”), enjoyed certain competitive advantages over private satellite communications companies like MSV. Accordingly, among the goals of the Act was to ensure that Inmarsat not use such advantages to harm competition in the marketplace.

The ORBIT Act, therefore, required the Commission to determine whether Inmarsat has “privatized in a manner that will harm competition in the telecommunications markets of the United States.”⁵ While the Commission found that Inmarsat has fulfilled the ORBIT Act’s privatization requirements,⁶ as described below, Inmarsat’s actions with respect to the L band spectrum that it shares with MSV and others are thwarting Congress’s goal of establishing a fully competitive market for satellite services.

Discussion

I. INMARSAT IS OBSTRUCTING ACCESS TO L BAND SPECTRUM TO HINDER COMPETITION

Inmarsat undercuts the ability of other MSS operators to compete fully by abusing the spectrum management and coordination process. In particular, Inmarsat has refused to return spectrum that MSV loaned temporarily to it, has refused to engage in re-banding L band

³ ORBIT Act § 2.

⁴ ORBIT Act § 2.

⁵ 47 U.S.C. § 761(b)(1)(A)(ii).

⁶ *Inmarsat Group Holdings Ltd.; Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the ORBIT Act, Memorandum Opinion and Order*, IB Docket No. 04-439, FCC 05-126 (rel. June 14, 2005).

spectrum that would allow MSV and other L band users access to adequate spectrum that is efficiently configured for broadband service, and has obstructed efforts to coordinate its new Inmarsat-4 satellite system.

A. Inmarsat Refuses to Return L Band Spectrum That MSV Allowed It to Use Temporarily

In 1999 and again in 2003, Inmarsat asked MSV if it could “borrow” certain L band frequency bands. MSV agreed to loan the spectrum to Inmarsat on a temporary basis. Inmarsat, however, has refused to return the loaned spectrum. Not surprisingly, MSV’s lack of access to the loaned spectrum complicates its ability to initiate its high speed mobile service with its current satellites and to develop a full complement of these services with its satellites under construction. In addition, Inmarsat’s continued use of the spectrum risks interference to MSV’s customers.

B. Inmarsat Prevents Competing L Band MSS Providers From Having Efficient Access to Spectrum

Inmarsat has maintained its competitive advantage *vis-à-vis* competing L band MSS providers by denying them fair and efficient access to spectrum. At present, the L band that both companies share is highly segmented, which makes it difficult for MSV and other competitors to make the most efficient use of the spectrum and to deploy the latest broadband technologies. Inmarsat steadfastly has resisted all efforts to re-band the L band in order to enable competing providers to access contiguous blocks of spectrum. Contiguous frequency blocks are necessary to support broadband mobile satellite services and to enhance the integrated satellite-terrestrial service permitted by the FCC’s authorization of the ancillary terrestrial component (“ATC”).⁷

⁷ See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz band, the L-band, and the 1.6/2.4 GHz Bands*, IB Docket No. 01-185, FCC 03-15 (rel. Feb. 10, 2003).

C. Inmarsat's Planned Services Illustrate Its Continued Anti-Competitive Use of Spectrum

In addition to using the spectrum loaned to it by MSV without permission and obstructing MSV's effort to use shared spectrum in efficient, contiguous bands, Inmarsat is also seeking access to the U.S. market to operate a satellite that has not been coordinated, and which will cause interference to MSV's existing services absent prior coordination.

Inmarsat currently has constructed three, and has launched two, of these uncoordinated fourth-generation satellites (Inmarsat-4). Inmarsat plans to use these satellites to support the use of Broadband Global Area Network ("BGAN") terminals that use wider bandwidths than the narrowband terminals presently being used with Inmarsat-3 satellites. These planned broadband terminals and the Inmarsat-4 satellites present new spectrum management challenges that require coordination to avoid interference with affected satellites operators. Nevertheless, Inmarsat has not engaged in good faith frequency coordination with affected L band operators regarding the specific frequencies to be used and other characteristics of the planned services. Such coordination is essential to avoid interference to MSV's operations.

Conclusion

Despite having been found compliant with the requirements of the ORBIT Act, Inmarsat continues to leverage its erstwhile dominance of the MSS market in anti-competitive ways by using spectrum to obstruct MSV from offering innovative services that Inmarsat would find difficult, if not impossible, to offer. Inmarsat's actions come at the expense of efficient use of the valuable L band spectrum resource and complicate MSV's efforts to provide broadband mobile services to underserved rural areas and to homeland security and other public safety users. Regrettably, Inmarsat's actions continue to thwart the ORBIT Act's goal of promoting a

“fully competitive global market for satellite communication services for the benefit of consumers.”

Respectfully submitted,

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Reply Comments, April 13, 2006

Reply Comments of Inmarsat PLC

Reply Comments of Intelsat LLC

Before the
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

In the Matter of)	
)	
Report to Congress Regarding)	IB Docket No. 06-61
the ORBIT Act)	

REPLY COMMENTS OF INMARSAT PLC

Inmarsat plc (“Inmarsat”) responds to the Comments submitted by Mobile Satellite Ventures Subsidiary LLC (“MSV”) in this proceeding.¹

The ORBIT Act sought to enhance competition through very specific means: requiring that the privatization of INTELSAT and Inmarsat be effectuated in accordance with enumerated statutory criteria,² none of which is implicated in MSV’s Comments. As MSV itself admits, the Commission already found that Inmarsat has *fully satisfied* the requirements of the ORBIT Act.³ Moreover, Inmarsat’s privatization has proceeded even further than the ORBIT Act required: all of Inmarsat’s shares are now eligible for trading on the London Stock Exchange, former signatory ownership (in the aggregate) does not exceed seven percent, and governmental ownership is negligible.⁴ Contrary to what MSV implies, the ORBIT Act does not provide a legitimate springboard to raise MSV’s concerns about L-Band spectrum sharing—an issue which MSV holds the key to resolving in any event.

¹ Public Notice, Report No. SPB-215, DA 06-559 (rel. Mar. 9, 2006).

² *Id.* at 1.

³ MSV Comments at 2; *Inmarsat Group Holdings Limited, Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the ORBIT Act*, 20 FCC Rcd 11366 (2005).

⁴ Inmarsat Comments at 2.

MSV is Inmarsat's direct competitor, and has a long history of using the U.S. regulatory process to attempt to preserve or restore its one-time monopoly in the L-Band: (i) opposing the introduction of TMI as a competitor into the U.S. market (whose business MSV then acquired);⁵ (ii) next, opposing the introduction of competition from Inmarsat (which the Commission determined served the public interest);⁶ and (iii) most recently, seeking to delay every application to bring new and innovative Inmarsat services to the United States that MSV cannot offer. In this proceeding, MSV further attempts to thwart competition and innovation by raising issues that have no relevance under the ORBIT Act or any other Commission policy,⁷ and by mischaracterizing the relevant facts. Inmarsat is compelled to set the record straight.

The proper venue for addressing the L-Band spectrum issues that MSV raises is the international L-Band coordination mechanism that MSV strategically has chosen to ignore. In fact, Commission policy is clear that *MSV is obligated* to participate in the Mexico City MoU process under which Inmarsat, MSV, and two other MSS operators are to enter into annual spectrum sharing agreements based on actual spectrum usage and demonstrated short term projections of spectrum need.⁸ Unfortunately, MSV abandoned the MoU process over six years ago.⁹ Instead, MSV has sought to retain for itself as much L-Band spectrum as possible by

⁵ See *SatCom Systems, Inc., et al.*, 14 FCC Rcd 20798 (1999) ("*TMI Market Access Order*").

⁶ *Comsat Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661, 21695-21996 (2001) ("*Comsat*") (finding that grant of market access for the Inmarsat system will promote competition in the U.S.).

⁷ *Comsat*, 16 FCC Rcd at 21699 ¶ 72 ("[S]pectrum limitation concerns are best addressed in the L-band coordination process.").

⁸ *FCC Hails Historic Agreement on International Satellite Coordination*, Report No. IN 96-16 (rel. Jun. 25, 1996).

⁹ See Brief for Appellee (FCC), *AMSC Subsidiary Corporation v. FCC*, Case No. 99-1513, p. 34-35 (D.C. Cir. May 17, 2000) (Public Copy) ("it was AMSC that vetoed the proposed extension of the operating agreement, despite the absence of any immediate interference

attempting to use the Commission's regulatory approval process to block other L-Band operators from serving the United States market.¹⁰

Inmarsat urged the reinitiation of MoU discussions in 2001, in the context of the rulemaking proceeding that established the very ATC service for which MSV now seeks access to more spectrum.¹¹ Since then, both Inmarsat and the United Kingdom's Office of Communications have urged that MSV return to the international negotiating table, but MSV consistently has ignored those requests. To the extent that MSV truly seeks to effectuate changes in the way the L-Band is currently used and segmented (rather than simply thwarting the introduction of innovative MSS services), the path is clear, and Inmarsat's invitation to MSV to participate in the international L-Band coordination process remains open. In fact, only after MSV does its part can requisite efforts be made to coordinate any potential "rebanding"¹² over North America with other affected L-Band systems around the world, with whom coordination also must be effectuated.

In the meantime, Commission policy is clear that use of the L-Band is to continue on a non-harmful-interference basis, and that no operator has the right to any specific portion of

problem, believing it was better strategically to force the issue of how to deal with the spectrum shortage.").

¹⁰ *TMI Market Access Order*, 14 FCC Rcd at 20813-20814 ¶¶ 30-32 ("AMSC requests that we keep foreign carriers out of the U.S. market for long enough for AMSC to use its monopoly power over U.S. customers to increase its traffic so significantly it justifies its increase in spectrum. We find that such a *quid pro quo* would be inconsistent with U.S. market access commitments in the WTO Agreement.").

¹¹ MSV Comments at 3.

¹² *Id.*

the L-Band.¹³ Thus, MSV does not, as it wrongly asserts,¹⁴ “own” any part of the L-Band, and MSV thus does not have any L-Band spectrum to “loan” or to “recall.”¹⁵

Finally, Inmarsat has effectuated all satellite coordination with MSV that is required by the ITU Radio Regulations, and MSV’s allegations about interference are both purely speculative and wholly unsubstantiated. MSV’s assertions about coordination are particularly hollow in light of MSV’s history of holding further coordination with Inmarsat hostage to separate business issues that MSV wishes to address. MSV repeatedly has rebuffed Inmarsat’s further coordination efforts, citing these “other” business issues as a gating item to progress in coordination discussions.¹⁶

¹³ *Comsat*, 16 FCC Rcd. at 21698 ¶ 71 (“[W]e cannot state that Inmarsat will be operating on frequencies coordinated for it and that there will be no chance of interference. The absence of [an operating] agreement, however, is not a sufficient basis upon which to deny the pending applications.”); *AMSC v. FCC*, 216 F.3d 1154, 1159 (D.C. Cir. 2000) (“[MSV] claims, however, that when there is no coordination agreement in effect [other operators] are free to operate on any frequency. . . including the frequencies that had previously been coordinated for [MSV]. The Commission responds that even then the likelihood of interference is not increased . . . because [the] licenses are expressly conditioned upon their operating on a ‘non-interference basis.’”).

¹⁴ MSV Comments at 3.

¹⁵ *Comsat*, 16 FCC Rcd at 21699 ¶ 73 (“[T]here is no permanent assignment of specific spectrum to any L-band operator. Thus, no operator can assert any claim with respect to a specific piece of spectrum.”); accord *MSV 101° W.L. Order*, DA 05-1492, ¶ 34 (2005) (“Unlike most international coordinations that create permanent assignments of specific spectrum, [L-Band] operators’ assignments can change from year to year based on their marketplace needs.”).

¹⁶ See Inmarsat Consolidated Response, File No. SES-STA-20051216-01756 *et al.*, at 9-11 (Jan. 6, 2006).

For these reasons, Inmarsat urges the Commission to require MSV to return to the MoU process, and to address L-Band spectrum issues separately from its report to Congress on the ORBIT Act.

Respectfully submitted,

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April 13, 2006

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re)
)
 Report to Congress Regarding the) IB Docket No. 06-61
 ORBIT Act)

REPLY COMMENTS OF INTELSAT

Intelsat LLC and its affiliated entities (collectively, “Intelsat”) hereby respond to comments filed by the International Telecommunications Satellite Organization (“ITSO”)¹ at the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced proceeding.² ITSO, an intergovernmental organization (“IGO”), has a contract with Intelsat – the Public Services Agreement. ITSO is once again³ improperly attempting to use the FCC as a forum to lodge complaints against Intelsat that arise from this private contract between Intelsat and ITSO.

The fact is that, as ITSO notes, “the ORBIT Act ... has achieved its goal to fully privatize INTELSAT.”⁴ This privatization, in turn, has resulted in Intelsat playing an important role in the intensely competitive global market for telecommunications services, a market in which Intelsat is just one among numerous communications

¹ Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 06-61, Report No. SPB-215 (filed Mar. 30, 2006) (“ITSO Comments”).

² *International Bureau Information: Report to Congress Regarding the ORBIT Act*, DA 06-559, Report No. SPB-215 (Mar. 9, 2006) (Public Notice) (“2006 FCC ORBIT Act Public Notice”).

³ Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 05-290 (filed Nov. 14, 2005); Reply Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 05-290 (filed Dec. 6, 2005).

⁴ ITSO Comments at 1.

providers. ITSO is essentially arguing that it does not like a privatized Intelsat and that it prefers the organizational structure and operation of the former IGO. Such arguments are not only unpersuasive and irrelevant to the issues at hand, but they are antithetical to the very purpose of the ORBIT Act, which is to “fully privatiz[e]” intergovernmental satellite organizations in order “to promote a fully competitive global market.”⁵

ITSO makes essentially four arguments. First, it expresses displeasure with the present ownership of Intelsat, the composition of Intelsat’s board of directors, and even the form of Intelsat’s corporate by-laws.⁶ As Intelsat has explained previously,⁷ the ability to make internal corporate decisions free of government interference, particularly decisions that further the purposes of the ORBIT Act, is a basic prerogative of the shareholders of any “privatized” company.⁸ Indeed, the actions that ITSO critiques merely serve to confirm that the privatization objectives of the ORBIT Act have been fully achieved by Intelsat.

Second, ITSO’s comments about pricing for LCO customers are totally misplaced. Intelsat contractually agreed to cap prices -- *i.e.*, impose no price increases for LCO customers -- and also agreed to price decreases in certain circumstances. Intelsat has abided by those contracts, and if ITSO or any customer believes otherwise,

⁵ 47 U.S.C. § 761 Note.

⁶ ITSO Comments at 1-3.

⁷ See, e.g., Joint Response of Intelsat and PanAmSat, IB Docket No. 05-290 at 13 (filed Nov. 29, 2005).

⁸ It is well established that the FCC does not regulate its licensees’ internal corporate decisions. See, e.g., *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, 7624 (1991) (finding that structural separation was an “unnecessary government intrusion” into internal business judgments regarding corporate organization).

there are contractual remedies specified in the agreements. In fact, neither ITSO nor any Intelsat customer has yet to invoke any such remedy or otherwise allege formally (as opposed to mere unsubstantiated assertion) any breach by Intelsat of any LCO pricing protection provision of any contract.

Third, ITSO makes a number of inaccurate assertions about the coverage, connectivity and health of Intelsat's satellite fleet.⁹ Contrary to ITSO's assertions, numerous Intelsat satellites, including some of those in the recent Intelsat 9 series, provide Ku-band coverage of Africa. Intelsat also maintains sufficient connectivity in the Asia-Pacific region to meet customer demand and its Public Services Agreement obligations. The PanAmSat satellite fleet will provide Intelsat with additional coverage and capacity for meeting the needs of customers in these regions.¹⁰

ITSO's concern that 16 Intelsat satellites will reach their end-of-life by 2010 is also misplaced. Intelsat expects these satellites, like prior satellites, to remain operational several years beyond their end-of-design life. Like any other commercial operator, Intelsat bases its satellite deployment and replacement plans on the fuel and health status of in-orbit satellites as well as on expected customer demand. This commercially-focused decision-making process is fully consistent with the privatization and competition objectives of the ORBIT Act.

⁹ ITSO Comments at 3-4.

¹⁰ Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEO PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., IB Docket No. 05-290, File Nos. SAT-T/C-20050930-00193, SAT-T/C-20050930-00194, SAT-T/C-20050930-01356, SAT-T/C-20050930-01357, SAT-T/C-20050930-01371, 19-20 (filed Sept. 30, 2005).

Finally, ITSO seeks to use this proceeding to persuade the FCC to condition Intelsat's acquisition of PanAmSat on the merged company's guaranteed performance of contractual public service obligations in the event of a hypothetical bankruptcy.¹¹ As noted by ITSO itself,¹² however, Intelsat's public service obligations were implemented via a private commercial agreement between ITSO and Intelsat, which contains its own enforcement regime. The ORBIT Act is silent as to public service obligations, and it neither contemplates nor endorses a regulatory role for ITSO over a privatized Intelsat.

ITSO's call for extraordinary regulation of Intelsat would re-create the very problem that the ORBIT Act was designed to solve. Instead of allowing Intelsat to operate like any other private entity in the "fully competitive" market called for by the ORBIT Act, ITSO wants to use the FCC's merger review process to subject Intelsat to unique and anticompetitive regulation. ITSO's proposed approach, which would create an uneven playing field that eventually would stimulate calls for additional regulatory intervention, should be rejected.¹³

¹¹ *Id.* at 4-6; see Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 05-290 at 2 (filed Nov. 14, 2005).

¹² ITSO Comments at 5.

¹³ As Intelsat previously explained in the Intelsat-PanAmSat merger proceeding, ITSO's request is also speculative, premature, would require the FCC to improperly inject itself as enforcer into a private contractual agreement, and would be inconsistent with the agency's prior decision to stop evaluating the financial qualifications of satellite applicants. See Joint Response of Intelsat and PanAmSat, IB Docket No. 05-290 at 9-14 (filed Nov. 29, 2005).

As discussed in its initial comments, Intelsat's completed privatization continues to have a positive impact on the global marketplace for communications services. The FCC should reject actions proposed by ITSO that could jeopardize this fulfillment of the objectives of the ORBIT Act.

Respectfully submitted,

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I, Kim Riddick, do hereby certify that on April 13, 2006, I caused copies of the foregoing REPLY COMMENTS OF INTELSAT to be served on the following parties by U.S. first class mail, postage pre-paid:

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